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Nos. 94-1644 and 94-9087

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1994

**JOHN and JANE DOE,**
**Former adoptive parents of the child Richard,**

*Petitioners,*

v.

**OTAKAR KIRCHNER,**
**Biological father of the child Richard,**

*Respondent.*

**On Petition for Writ of Certiorari to the Supreme Court of Illinois**

## MOTION FOR LEAVE TO FILE BRIEF AND BRIEF OF AMICI CURIAE THE YALE UNIVERSITY CHILD STUDY CENTER, ALBERT J. SOLNIT, M.D., AND FRED R. VOLKMAR, M.D. IN SUPPORT OF THE PETITIONERS

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**On Petition for Writ of Certiorari to the Supreme Court of Illinois**

## MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE IN SUPPORT OF THE PETITIONERS

The Yale University Child Study Center, Dr. Fred R. Volkmer and Dr. Albert J. Solnit respectfully move for leave to file the attached brief *amicus curiae* in this case and state as follows:

1. The petitioner consents to this filing. Attempts by phone and mail to communicate with the attorney for the respondent to obtain consent went unanswered.

2. The interest of the amici in this case arises from their groundbreaking work in the field of early childhood development. The petition seeks review of whether there

is a liberty interest, within the due process clause of the Fourteenth Amendment, in the family bonds between an adopted child and his adoptive parents. It is the amici's contention, based on their professional experience, that children adopted in infancy attach themselves naturally to their adoptive parents. Even when that adoption is later legally terminated, continued custody by the adoptive parents may be in the best interest of the child. Such custody should not be terminated by operation of law, as Illinois has done here (by ordering that the child returned to his birth father "forthwith"), but should instead be subject to a hearing to weigh the child's liberty interest against the possibly inconsistent legal interests of the biological parents.

3. The proposed amicus brief is short, avoids duplication of the petition and presents factual material unavailable in the record concerning the liberty interest of adopted children.

Respectfully submitted,

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**On Petition for Writ of Certiorari to the Supreme Court of Illinois**

## BRIEF OF AMICI CURIAE IN SUPPORT OF THE PETITIONERS

*Amici curiae* The Yale University Child Study Center, Dr. Fred R. Volkmer and Dr. Albert J. Solnit respectfully request that this Court grant the petition of writ of certiorari seeking review of the Illinois Supreme Court's decision in this case.

## INTERESTS OF THE AMICI CURIAE

The Yale University Child Study Center has a long standing interest in issues of child development and child custody. Dr. Fred R. Volkmer, Harris Associate Professor

of Child Psychiatry, Pediatrics and Psychology, Yale University Medical School, and Dr. Albert J. Solnit, Sterling Professor Emeritus of Psychiatry and Pediatrics, Yale University Medical School, are long time principals of the Center.

This Court's Rule 37.1 states that an amicus brief can be of considerable help to the Court if it brings relevant matter to the attention of the Court not already presented by the parties. The amici understand that the record contains no evidence of the developmental effects of the permanent removal of Richard by his biological father (the respondent in this case) from the custody of Doe petitioners. The amici address this issue on Richard's behalf as mental health professionals, a field in which they have special and considerable expertise. They believe that there is a liberty interest, within the due process clause of the Fourteenth Amendment, in the family bonds between an adopted child and his adoptive parents that warrants an evidentiary hearing before the termination of that relationship.

## FACTS OF THE CASE

From their review of the record, amici understand the facts of the case as follows: The adoptive child, known as Richard, was born on March 16, 1991 to a 24 year old unwed mother, Daniella Janikova, who within a week of the birth executed a consent to adoption and who also refused to disclose the identity of the biological father. Richard was then placed directly with the adoptive family (the Does) upon discharge from the hospital. Apparently at some point the biological father was falsely told that the child died. After the child's placement, the biological parents reconciled and were married. When the child was more than six months old, the biological father filed a peti-

tion to establish his paternity. He was declared the biological father. The adoptive parents filed an amended petition to adopt, and in May 1992 the Circuit Court of Cook County entered a judgment of adoption in favor of the adoptive parents. App. 151a.

After various interim appellate proceedings, the Illinois Supreme Court on June 19, 1994 held that the adoption was invalid and vacated the adoption order. App. 89-90a. After this Court denied review, and the Does and Richard's guardian ad litem commenced a proceeding for determination of custody in circuit court, the biological father brought an original habeas corpus proceeding in the Illinois Supreme Court to preclude the custody hearing and to gain immediate custody of Richard. On January 25, 1995 the Illinois Supreme Court granted the writ and ordered the adoptive parents to surrender custody of Richard "forthwith." App. 84-85a. Amici understands custody was surrendered on April 30, 1995. Richard is now four years old.

Amici emphasize that they have not personally examined the parties involved nor are they in any way commenting on the capabilities of the biological parents to be competent parents. Rather they wish to comment on what is in the child's best interests when an adoption is terminated.

## REASONS WHY THE PETITION SHOULD BE GRANTED

Children need to form stable relationships with loving adults. Studies of children raised in setting where the stable relationship is lacking or interrupted are at greatly increased risk of personality and psychiatric disorders later in life. To move a four-year-old child in Richard's situation from the only parents he has ever known places his future development at great risk. Competent mental

health professionals, through expert testimony on appropriate examinations, can advise a court as to the parameters of the risk and otherwise assist the court in determining what action is appropriate.

As mental health professionals with a long standing interest in issues of child development and child custody, amici are gravely concerned that, under the Illinois Supreme Court order, Richard has been entrusted to the care of an individual who is his biological parent but who has not functioned as his parent since his birth. Based on amici's awareness of the facts of this case and their experience with many similar cases, they believe that his removal from the only parents he has ever known puts his development at serious risk and constitutes a material injustice to the child. In this regard amici speak as child experts and mental health professionals for Richard, whose best interests have been served by his current parents. Accordingly, some process is due before the state intrudes upon or disrupts the relationship in this well-functioning family, constituted by Richard and his parents, the Does.

With regard to the child, there appears to be no dispute that the adoptive parents have functioned as his only parents, his psychological parents, since his placement with them shortly after birth. Since that time they have provided him with what is described as a loving, caring and secure home. By these measures, the Does are Richard's actual parents. Richard has formed his attachments to them as parents and these attachments are, by now, well consolidated.

All children need to form stable relationships with loving adults, especially their parents. This process of developing such attachments begins at birth. By the age of one, the

child's conception of who her/his parents are is well established. Even before the first birthday this foundational attachment is manifest in such behavioral phenomena as stranger anxiety and the maintenance of physical proximity to the parents. By the time that language has developed, these processes have been further consolidated; and while subsequent modifications in the child's conception of and relationship to his other parents are made throughout life, it is these very earliest attachments which are the most fundamental.

Studies of children reared in settings where such attachments cannot develop, such as in institutions, have consistently revealed such children to have severe and enduring developmental and behavioral delays. S. Provence & R. Lipton, *Infants in Institutions* (International Universities Press, 1962). Such children are at very greatly increased risk for personality and psychiatric difficulties later in life. J. Bowlby, *Maternal Care and Mental Health* (World Health Organization, 1954). It is for this reason that orphanages and other large institutional settings for care of infants and young children have been effectively closed in this country. It is also clear that children reared in settings where they have had changing parental figures, *e.g.*, multiple foster placements, are also at markedly increased risk for developmental and emotional problems. J. Goldstein, A. Freud and A.J. Solnit, *Beyond the Best Interest of the Child* (Free Press, 1973); A.J. Solnit, B.F. Nordhaus and M.A. Lord, *When Home is No Haven: Child Placement Issues* (Yale University Press, 1992).

Senior clinicians, teachers, and researchers at amicus Center have a long-standing awareness of these findings. In the series of publications cited above, amici have documented the adverse effects of disruption of early parental attachments and the importance of stability in child

placement always guided by the overarching principle of the child's best interest. This implies supporting, to the extent possible, the psychological parent(s) in their attempts to provide for the child. That is why in the State of Connecticut, where amici are based, the legal presumption is that every effort should be made to support parents and children and avoid disruption of existing parental relationships as far as possible. In most cases the psychological and biological parents are, of course, one and the same. When, as in this case, they are not the same, the child's best interests would almost certainly be served by having him remain with the psychological parents. Amici say "almost certainly" because they have obviously not conducted a formal evaluation, but their position is that a court should consider the child's interest in the light of evidence, rather than acting by judicial fiat.

It is clear that what may in the biological parents' interests may conflict with the child's best interests. To move Richard from the care of the only parents he has ever known will put his future development at very grave risk. Such a move could have disastrous effects on his future development. As the Illinois Appellate Court has noted, the issue here is not the same as would be entitled in the adjudication of an issue of ownership of a chattel. App. 118a. Rather, the issue of the child's best interest should remain paramount.

## CONCLUSION

The bright line rule announced by the Illinois Supreme Court forecloses any consideration of these developmental issues in an evidentiary hearing. While as the court below determined, there may be some societal costs in permitting consideration of the best interest of the child in picking up the pieces after a failed adoption, amici as mental health professionals stress that there are very real, immediate costs to the child and that these costs must be heard and considered in the judicial process revolving such an adoption.

To conclude, as the Illinois Supreme Court did, that the Due Process Clause forbids consideration of these psychological costs is inhumane and destructive. Aware of the harm that can follow the removal of a child from the custody of the only parents he has known, amici respectfully urge this Court to hear this case and reverse the decision below.

Respectfully submitted,

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